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March 30, 2007

By Electronic Filing

Ms. Marlene H. Dortch
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

**Re: In the Matter of Amendment of the Commission's
Part 90 Rules in the 904-909.75 and 919.75-928 MHz Bands
WT Docket No. 06-49
Ex Parte Presentation**

Dear Ms. Dortch:

In various *ex parte* filings over the past few months, Progeny has made statements that require a response by Itron.¹

Progeny has yet to provide essential details regarding its planned operations under the new rules that it seeks, denying the Commission and interested parties the opportunity to consider and respond to its proposal adequately. The best that Itron can surmise from the present record is that Progeny wants to offer a "security-oriented" Enhanced Position Location ("EPL") service; broadband data/WISP access, to rural areas in part or in full; and open access to public safety on a priority basis. Progeny, however, has not provided the type of specific technical information that is necessary in crafting rules for a licensed service that must coexist with hundreds of millions of Part

¹ See e.g., Letter to Marlene H. Dortch, Secretary, Federal Communications Commission, from Janice Obuchowski Re: Amendment of the Commission's Part 90 Rules in the 904-909.75 and 919.75-928 MHz Bands, Ex Parte Presentation, WT Docket No. 06-49 (Dec. 12, 2006) ("December Ex Parte") and subsequent Progeny filings.

15 devices in the band; details such as coverage area, data rate, duty cycle or power levels, or the number and density of units.²

In fact, Progeny announced only in December 2006, that it retained researchers at Purdue University to “study” possible uses of the spectrum by public safety entities. This is a year long project, which means that neither the FCC nor any party will know until early 2008 at the earliest what these potential or proposed uses may be or how they will affect other users.

Contrary to Progeny’s suggestion that the Part 15 Coalition seeks more information than needed regarding Progeny’s intended deployment,³ nothing out of the ordinary is being requested. As a matter of administrative law, the FCC must consider all relevant factors when adopting new rules.⁴ This requires that rulemakings must be based on facts in the record. Progeny, however, seeks to have the FCC change the 900 MHz rules on the basis of some generalizations about how M-LMS licensees will use the band, and to do so almost one year before its own study of this use is complete.

The present M-LMS rules were adopted only after an extensive examination of technical parameters that would permit M-LMS licensees to coexist with a band filled with Part 15 devices. The M-LMS rules were tailored so that existing Part 15 uses could continue and new Part 15 uses would be accommodated in the band. While the Commission needs adequate technical information in any rulemaking proceeding, it is particularly critical in this one. The FCC cannot rely on vague ideas of “spectrum flexibility” and “technology-based solutions” to change the allowable use of spectrum without a better understanding of how the change would affect Part 15 users. Indeed, Progeny claims only that these concepts “typically” will mitigate interference,⁵ not that they will in this instance or under every circumstance.⁶

² Other interested parties also note recently the continued lack of clarity about Progeny’s plans and the likely use of the M-LMS spectrum if the new rules are adopted. *See* Ex Parte Presentation from Warren Havens, WT Docket No. 06-49 (Feb. 26, 2007).

³ *See* December Ex Parte at 7.

⁴ *See e.g., Citizens to Preserve Overland Park vs. Volpe*, 401 U.S. 402 (1971).

⁵ December Ex Parte at 7.

⁶ Itron questions Progeny’s most recent claims that it can “ensure” interference protection and that it has “demonstrated” that M-LMS operations under the proposed rule changes would cause less interference to Part 15 devices. *See* Letter to Marlene H. Dortch, Secretary, Federal Communications Commission, from Janice Obuchowski Re: Amendment of the Commission’s Part 90 Rules in the 904-909.75 and 919.75-928 MHz Bands, Ex Parte Presentation, WT Docket No. 06-49 (March 21, 2007). Considering the number of different Part 15 users and technologies, Progeny has not provided evidence of the level of relevant interference mitigation study necessary for it to make these assertions.

Recently, and long overdue, Progeny has submitted the results of a monitoring study it conducted in the Washington, D.C. area, which, Progeny asserts, purports to show that Part 15 usage is very light.⁷ This is incorrect. Itron and the Part 15 Coalition presently are analyzing Progeny's study and will submit a more specific response as soon as that study is complete.

Meanwhile, suffice it to say that Progeny is wrong about Itron's use of the 902-928 MHz band,⁸ in that Itron has a number of meter reading devices that operate across the entire band and not just on "915 \pm 3 MHz."⁹ And Progeny is wrong to assert that its study, in one area of the country and of one type of Part 15 operation, can indicate the true level of Part 15 usage across the spectrum.¹⁰ Progeny is also wrong that the "legacy" Part 15 usage of the band is somehow "inefficient." The very large number of devices at low power results in extremely efficient bits/Hertz/acre use of the spectrum. Indeed, the very purpose of the Part 15 rules is to allow for the operation of low cost consumer devices and technological innovation. In this band, both objectives have been accomplished to great public benefit. Requiring Part 15 devices to use "advanced technology" would force consumers to pay millions of dollars more for Part 15 devices, all for the enhancement of the value of the spectrum for M-LMS licensees.

Sincerely,

A handwritten signature in black ink that reads "Henry Goldberg". The signature is written in a cursive, flowing style.

Henry Goldberg
Attorney for Itron

cc: Fred Campbell
James Schlichting

⁷ Letter to Marlene H. Dortch, Secretary, Federal Communications Commission, from Janice Obuchowski Re: Amendment of the Commission's Part 90 Rules in the 904-909.75 and 919.75-928 MHz Bands, Ex Parte Presentation, WT Docket No. 06-49 (March 14, 2007).

⁸ December Ex Parte at 9.

⁹ See Letter to Marlene H. Dortch, Secretary, Federal Communications Commission, from Henry Goldberg, Re: Amendment of the Commission's Part 90 Rules in the 904-909.75 and 919.75-928 MHz Bands, Ex Parte Presentation, WT Docket No. 06-49 (March 23, 2007).

¹⁰ For example, it is clear that Progeny's measurements for its study do not reflect the operation configuration of all the many Part 15 users of the band, including the various antenna heights, signal levels and duty cycles.